STATE OF MICHIGAN

IN THE SUPREME COURT

LAWRENCE T. CURTIS,

Plaintiff-Appellee,

V

CITY OF DETROIT,

Defendant-Appellant. /

Supreme Court No. 125652

Court of Appeals No. 241632

Wayne County Circuit Court
No. 00-032355 CH

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PLAINTIFF APPELLEE'S SUPPLEMENTAL BRIEF
ON APPLICATION FOR LEAVE TO APPEAL

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STATEMENT OF ISSUES PRESENTED

I. **Was the CITY OF DETROIT required to give Plaintiff Notice of the demolition proceedings prior to entering on to his property and demolishing his building**

Plaintiff-Appellee answers "Yes."

Defendant-Appellant answers "No."

II. **Did the Lis Pendens that was recorded become ineffective as "Notice" after the three-year expiration date?**

Plaintiff-Appellee answers "Yes."

Defendant-Appellant answers "No."

ARGUMENT

I. THE CITY WAS REQUIRED TO GIVE PLAINTIFF NOTICE OF DEMOLITION PROCEEDINGS TO AVOID BEING A TRESPASSER

Trespass is an unauthorized intrusion or invasion, Douglas v Bergland, 216 Mich. 380, 384; 185 NW 819 (1921). "Normally, a public officer who is on the premises of another pursuant to legal authorization is not liable for trespass," Antkiewicz v Motorists Mut Ins Co, 91 Mich, App 389, 396; 283 NW2D 749 (1979), vacated in part on other grounds 407 Mich. 936; 285 NW2D 659 (1979). There is liability, however, when a public officer acts in excess of his authority, such as where he does not comply with city code or an ordinance. Antonian v City of Dearborn Heights, 224 F Supp 2d *1129*, 1143-1144 (ED Mich, 2002); Fruman v Detroit, 1 F Supp 2d 665, 675 (ED Mich, 1998).

In Fruman the City of Detroit incorrectly sent out eight notices of hearings and/or demolition to the address of the property to be demolished, while being aware of the Plaintiff's correct Dearborn address based on the plaintiff changing his address on the city tax rolls and tax notices being sent to the Dearborn address. The Federal District Court Judge found the City liable for trespass in demolishing the property, where the city failed to mail the notices to the last known address, failed to perform a diligent search to ascertain the plaintiff's whereabouts, and failed to post any notices. Fruman, 675.

The facts in Fruman are similar to the facts before this Court in that they reveal a City demolition procedure inept at providing property owners procedural due process. Over the course of six years, the Plaintiff in Fruman had been corresponding

with the City concerning the City's plans to purchase the property. While this was happening, the City sent demolition notices to the property, though another department had corresponded with Plaintiff at his new address. Fruman, 671-672.

In the case before this Court the City sold the building to Barbara Hoyle by deed dated August 29, 1994. Prior to giving her the deed, the City had recorded its Lis Pendens, mailing her notice of the demolition proceedings to the City of Detroit Economic Development Department.

The requirement that the CITY identify the property owner by a "diligent search" should mean, at a minimum, that it be diligent in perfecting the notice it relies on – The Lis Pendens. Defendant CITY acknowledges that neither the statute, nor the ordinance specifically deal with the situation where the owner of the property at the time of demolition is different than the person notified. However, Defendant CITY completely ignores Michigan case Geftos v. Lincoln Park 39 Mich App 644(1972).

The facts and analysis of the Geftos case are addressed in the Plaintiff-Appellee's Brief in Response to the Application for Leave to Appeal.

In Geftos the Plaintiff was granted the same relief that has more recently granted the Plaintiffs in Antonian and Fruman. The Court of Appeals ruled that Plaintiff Geftos was entitled to damages for trespass, because he had not been given proper notice, and there was a deprivation of procedural due process. Id., 654-655. In Antonian, the City of Dearborn Heights was held liable for trespass for demolishing a building prior to a 20-day appeal period. Antonian, 1144.

In Geftos the Court specifically rejected the argument that is being made by Defendant Appellant:

> Nor can it be successfully argued that because the City had on August 15, 1966 (being prior to the time plaintiff took ownership of the premises), declared the home to be a nuisance and ordered its demolition within 30 days, plaintiff was not entitled to any additional notice and hearing regarding the renewal of these determinations, he having been apprised of the city's actions prior to the time he took ownership.

Id., 655.

Arguably, the filing of a Lis Pendens prevents the Geftos-type claim. It apprises the purchaser of demolition proceedings **before** the purchase. Of course, the Lis Pendens becomes stale after three years. MCL 600.2715.

Plaintiff Appellee was given no notice of the slated demolition. Instead, the CITY relied on the stale Lis Pendens to provide the notice. The CITY cannot now argue that it didn't have to record the Lis Pendens.

II. THE LIS PENDENS BECAME INEFFECTIVE AS "NOTICE" AFTER THE THREE YEAR EXPIRATION DATE

The Lis Pendens Statute expressly provides that "[a] notice of pendency hereafter filed for record shall be effective as notice for a period of 3 y ears from the date of filing." MCL 600.2715.

"Notice of lis pendens serves an important public purpose by protecting the right to litigation involving real property and protecting prospective purchasers by apprising them of disputes regarding rights in the land." Kaufman v. Shefman, 169 Mich App 829, 837 (1988).

The City Ordinance provides in the last sentence: "If an owner cannot be located **after a diligent search**, the notice shall be posted upon a conspicuous part of the building or structure." Detroit City Code, 1984, Section 12-11-28.4(a) (emphasis added)

In Fruman v. City of Detroit, 1 F Supp 2d 665 (ED Mich, 1998) the Court granted the Plaintiff summary judgment for trespass, ruling that the City did not comply with the Ordinance provision requiring a "diligent search" in order to provide notice to the property owner. Fruman, 672.

Diligence should at least require that the CITY not allow the Lis Pendens to expire.

CONCLUSION

The CITY provided no notice to CURTIS prior to demolition. The only arguable notice was the recorded Lis Pendens.

The public policy promoting free alienability of real estate requires that purchasers be put on notice concerning proceedings affecting the property. This is why the CITY recorded the Lis Pendens. For the CITY to now suggest that it didn't have to record a Lis Pendens is ridiculous.

The Lis Pendens Statute expressly provides that the Lis Pendens shall expire after three years. The language could not be clearer. Any judicially created exception would likely swallow the rule, creating disastrous uncertainty in the laws governing real estate transactions.

This situation, hopefully, represents an isolated situation where the CITY "dropped the ball." A Supreme Court decision on these facts will either codify changes to the City demolition procedure, based on a very unusual situation, or it will unnecessarily do damage to real estate law and/or create jurisprudence rewarding a lack of diligence in notifying property owners.

The unpublished opinion of the Court of Appeals is practical, logical, and based on Michigan law. It should not be upset.

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